

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1150/2000

(19)

New Delhi, this the 9th day of October, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Tamai, Member (A)

1. G.S.Chaman
S/o Late Shri Ganda Ram
R/o Flat No.A-4E, DDA Flats, Munirka
New Delhi - 110 067.

2. H.K.Gupta,
S/o Late Shri D.N.Gupta
R/O 408, Asia House,
K.G.Marg, New Delhi.

...Applicants
(Shri G.S.Chaman, Applicant No.1 in person)

V E R S U S

UNION OF INDIA : THROUGH

1. Secretary,
Ministry of Personnel,
Public Grievances and Pensions
Dept. of Pension & Pensioners Welfare,
Central Secretariat, North Block, New Delhi.

2. Director
Intelligence Bureau
Ministry of Home Affairs
Govt. of India, Central Secretariat~
North Block, New Delhi.

(By Advocate Shri R.V.Sinha through
proxy counsel Shri R.N.Singh) ...Respondents

O R D E R

By Hon'ble Shri Govindan S. Tamai,

Reliefs claimed in this OA are as below :-

(a) to revise and enforce the pension scheme uniformly to all the pensioners governed by the CCS (Pension) Rules, 1972, irrespective of their date of retirement and without detriment to their interests as post - 1.1.1986 but pre - 1.1.1996 pensioners ;

... 2/-

(b) to notionally fix the applicants revised pension as on 1-1-1996 by enhancing the minimum revised pay of the applicants for the post held at the time of their retirement by as many stages as they had advanced in the pre-revised scale of pay of that post and then fix their pension at 50 % thereof ;

(c) to strike off words "not less than 33 years" in Rule 49 (2) (a) and the words "subject to a maximum of 16 1/2 times the emoluments" in Rule 50 (1) (a) of CCS (Pension) Rules, 1972.

(d) to give the applicants additional pension ; either at 0.5 % of every six months of additional service as recommended by the 9th CPC over and above 30 years of qualifying service or at 50 % of their respective revised notional pay as in (b) \times No. of years of additional service over and above 30 years of such service i.e. 6 & 5 years respectively in the case of the applicants;

(e) to give them revised gratuity as per their respective revised notional pay as calculated in (b) supra \times 16 1/2 less DCRG already paid for their full qualifying service of 36/35 years.

(f) to treat as void all OMs/orders/instructions which seek to work contrary to above prayers of the applicants ;

(A)

(g) to complete action on above direction in a time-bound manner within 90 days of the date of the Hon'ble Tribunal's order on the OA ;

(h) to issue any other order/direction considered appropriate in the matter and

(i) award cost.

2. Heard Shri G.S.Chaman, Applicant No.1 in person and Shri R.N.Singh, learned proxy counsel for the respondents.

3. As brought out in this OA, both the applicants are retired personnel from Intelligence Bureau, who are aggrieved that they have been denied their legitimate retirement dues. Their pensions as on date are fixed at Rs. 6000/- and Rs. 5000/- respectively. They point out that the Fifth Central Pay Commission, in para 137.14 of its report, though talked about the basic objective of parity, infact created three categories of pensioners i.e.

(a) pre-1986 pensioners

(b) pensioners between 1-1-1986 and 1-1-1996 and

(c) post 1-1-1996 pensioners. In this arrangement notional fixation was permitted only for pensioners as on 1-1-1986 but not to those on 1-1-1996, which was an irrational approach. Besides, by directing that the pension shall not be less than

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50 % of the minimum of the scale of the post held at the time of retirement benefit of increment earned has been denied. This also comes in the way of additional retirement gratuity, though pension includes gratuity. Trifurcation of the categories of pensioners have converted equals into unequals and is against the proposition laid down in D.S.Nakara Vs. UOI & Ors. (AIR 1983 SC 30), V.P.Gautam Vs. UOI in SLP Nos. 2738 & 2739/1984, B.B.Malik Vs. UOI [(1984) SCC (L&S) 486] etc. Further by Govt's order dated 27-10-1997, reducing the qualifying period for pension to 30 years from 33 years; persons who had less service have been equated with those with more service. By this benefit given to pre-1986 pensioners has been denied to those who retired between 1986 and 1996 like the applicants. The position had not improved by the subsequent order of 17-12-1998, fixing the relevant date as 1-1-1996. This treated unequals equally by directing that pension should not be less than 50 % of the minimum of the revised pay of the post held on 1-1-1996 and making length of service over 30 years irrelevant; The order became one post - one pension instead of one post - one pay and kept all the pre-1996 retirees distinct from post 1-1-1996 retirees. Besides, Govt. has declined to accept the Pay Commission's recommendations for grant of 0.5 % additional pension for every six months of additional service over 33 years; which was a measure of social welfare. This was incorrect. Besides, while in terms of Rule 49 (2) (b) of CCS (Pension) Rules, 1972 those whose service falls short of qualifying service, get their pensions accordingly adjusted, the same benefit is not made available with longer service. Acceptance of the

recommendations for grant of increased of pension for service above 33 years would have removed this anomaly. Though no provision for forfeiting the service over 33 years, denial of this recommendation amounts to that. And this is also against harmonious construction of rules, as according to him there has to be proportionate shortfall/increase in pensionary benefits relatable to the service below/above the qualifying service. Pension being deferred wages for the years spent in service, it should be relatable to the service rendered and it was a vested right. Respondents have not acted properly in this regard. Besides, though pension included gratuity, in terms of Rule 30 (O) of the Pension Rules, the said amount has not been revised, causing loss to the applicants, though Pay Commission has not precluded it. If this was done the applicant (s) would have got much more than what they got as gratuity. This was also denied to them though Govt. could not have forfeited their gratuity. Further, in the case of EPF/GPF retirees, no ceiling is put on the number of years or the employees contribution. Pension was akin to that contribution but still it has been denied to Govt. servants like the applicant. This was arbitrary and against the concepts of equality and unreasonable. This was also against a number of judicial pronouncements upholding principles of legitimate expectation. Applicants who had retired between 1-1-1986 and 1-1-1996 have been denied the notional fixation as on 1-1-1996, which has been granted to pre 1986 pensioners giving them notional fixation as on 1-1-1986, have thus been treated improperly, and this called for intervention by the Tribunal by considering

the grounds raised in the OA and granting them the reliefs sought for.

4. All the ~~pleas~~ raised by the applicants are stoutly opposed by the respondents. According to them the applicants have come before the Tribunal before exhausting the departmental remedies. Respondents have acted only according to the existing rules. The applicants' pensionary benefits have been correctly worked out and given to them and there have been no denial of the proper benefits. Regarding the plea of the applicants about their promotion to the grade of Dy. Director, the same was under examination and notional promotion, if it becomes necessary would be granted. Pay Commission's recommendations become binding only after they are accepted by the Government and till then they remain only recommendations. Vth Pay Commission had recommended as a first step to bring all past pensioners on the same level. Thus all pre 1986 pensioners were brought on IV Pay Commission level, like those serving on 1.1.86 by notionally fixing their pay and pension and consolidating it by orders of 27.10.97 & 17.12.98. Such consolidated pension was to be not less than 50% of the minimum of the revised scale of pay as on 1.1.96. Post 1986 retirees on the other hand were given consolidation by adding DA, Interim Reliefs and fitment weightage at 40%, which became their pension. This was a policy matter taken by the Government. While it is true that the Pay Commission had recommended grant of additional pension @ 0.5% for every six months of additional

service over 33 years of service, the same had not been accepted by the Govt. On account of legal, financial and administrative difficulties. Applicants do not have any vested right to claim that they should be given such increased pension. Seeking notional fixation for post 1.1.86 retirees, the applicants are asking for benefits much beyond the recommendations of the Pay Commission. In fact as the Govt. had improved upon the recommendation of the Commission by increasing fitment weightage, nothing further can be asked or granted.

5. During the oral submissions both parties reiterated their written pleas. Sh. Chaman, the applicant canvassed somewhat specious an argument that as DOPT the first respondents have not filed any separate counter, it should be assumed that they had accepted the pleas raised by him in the OA. Shri R.N. Singh, learned proxy counsel for the respondents pointed out that his counter affidavit was for all the respondents.

6. We have carefully considered the matter. In this OA, the applicants seek to assail the recommendations of the Fifth Pay Commission in so far as they did not meet with their personal predilections and the decision of the Government with regard to the rejection of some of their recommendations of the Commissions. The applicants allege that three categories of pensioners have been created i.e. pre 1986, post 1986 and post 1996, which was improper. This is not based on facts. Commission have brought all the pre 1996 pensioners together by consolidation

and grant of fitment weightage subject to the condition that the pension to be drawn by this shall not be less than 50% of the minimum of the revised pay scale as on 1.1.96, of the post held by the individual at the time of his retirement/death. In other words whatever be the pay which was being drawn by the retiree, his pension would be not less than 50% of the minimum to the revised/replacement scale, for the post as 1.1.96. There cannot be any quarrel with this arrangement. The above recommendation having been given by the expert body like the Pay Commission, and accepted by the Government, it falls specifically outside the domain of the Tribunal to adjudicate upon, as held by the Hon'ble Supreme Court in the case of State of Madhya Pradesh Vs P.V. Hariharan (JT 1997 (3) SC 569).

7. Next plea of the applicants is that the Govt. had incorrectly declined to accept the recommendations of the Vth Pay Commission for grant of additional pension @ 0.5 % for every 6 months above 33 years of qualifying service, which has come in the way of their getting higher pensionary benefits. As correctly pointed out by the respondents, recommendations of Pay Commission ipso facto do not become Govt. decisions, and the Govt. can as the policy formulating body take a decision to accept or not to accept any recommendation. Unless and until such a recommendation is accepted, it does not have any sanction and the applicants do not have any vested right to seek benefit out of such recommendations. Government after considering the recommendation of the Commission has taken a policy decision not to give

effect to the said recommendation and the matter rests there. All the arguments raised by the applicants to the contrary are faulty and the judicial decisions sought to be relied upon by them are clearly distinguishable on facts. The calculations of pension which according to the applicants, they should have got are imaginary and do not merit any endorsement.

8. The applicants have also referred to the promotion to the grade of Dy. Director they should have got in their organisation at the time of their retirement. Respondents have indicated that the said matter was under their examination, and that the applicants would get the benefits, if found eligible and suitable with consequential benefits in accordance with law. Nothing remains to be considered on that.

9. In the above view of the matter, we are convinced that the applicants have not made out any case for interference. The application, therefore, fails and is accordingly dismissed. No costs.

(Govindan S. Tampi)
Member (A)

/vikas/

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)